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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2003-2004 Administrative Review of Honey from Argentina: Final Results of Antidumping Duty Administrative Review

Summary

We have analyzed the case and rebuttal briefs of the interested parties in the 2003-2004 administrative review of the antidumping duty order on honey from Argentina (A-357-812). We have made no adjustments to the margin calculation program and recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comment from parties:

1. Warranty Expense Methodology
2. Testing Expenses

Background

On December 28, 2005, we published the preliminary results of the 2003-2004 administrative review of honey from Argentina. See Honey from Argentina; Preliminary Results and Partial Rescission of Antidumping duty Administrative Review and Intent Not to Revoke in Part, 70 FR 76766 (December 28, 2005) (Preliminary Results). This review covers two exporters of honey from Argentina, Asociacion de Cooperativas Argentinas (ACA) and Seylinco S.A., to the United States during the period of review (POR) of December 1, 2003, to November 30, 2004. The petitioners involved this review are the Sioux Honey Association and the American Honey Producers Association (Petitioners). In response to the Department's invitation to comment on the Preliminary Results, ACA submitted its case brief on January 30, 2006, and petitioners submitted its rebuttal brief on February 7, 2006. In addition, two ex parte meetings were held

with respect to this review. See Memorandum to the file, dated February 27, 2006, on file in the Central Records Unit (CRU) in room B-099 of the main Commerce building.

Discussion of Issues

Comment 1: Warranty Expense Methodology

Respondent ACA objects to the Department's warranty expense calculation methodology employed in the current administrative review on three separate bases. First, ACA states the use of an historical average, in lieu of actual warranty expenditures related to POR sales, is contrary to the Department's past practice in this proceeding and other cases with similar fact patterns. Second, ACA argues that the Department failed to provide sufficient justification for changing methodology in this review. Third, ACA claims that the Department's methodology yields a distorted dumping margin because it ignores customers' increasing quality requirements and correspondingly higher warranty expenses. ACA concludes that the Department's methodology ought to rely on ACA's actual warranty claims which directly link to POR sales.

ACA first argues that the Department has relied on transaction-specific warranty information when such data are available and verified, noting that the Department most typically relies on historical warranty data in situations where POR-specific data are not available. See Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part, 64 FR 46344 (August 25, 1999) at Comment 4 (Brass Sheet and Strip From Canada) and Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan, 64 FR 30592, 30611 (June 8, 1999) at Comment 12. In the previous administrative review of this proceeding, ACA notes the Department accepted such transaction-specific warranty expenses whether the warranty claims were made during or after the close of the POR. ACA attests that transaction-specific warranty data are available on the record of this review and notes the Department verified such links between the warranty claims and the POR sales at verification. ACA notes that the Department did not make any assumptions that ACA's reported warranty data were aberrational or that a significant time lag existed between the warranty claim and the time of sale. ACA asserts that all relevant warranty claims were settled and known to ACA at the time the questionnaire responses were prepared. According to ACA, these actual, verified warranty expenses provide a more accurate basis for calculating ACA's warranty expenses than estimates based on prior periods; ACA concludes that using a three-year average is contrary to both Department practice and the relevant facts of this case.

Secondly, ACA contends there is no justification for the Department's departure from the methodology it used in each of the prior segments of this proceeding. ACA claims it relied on Commerce's prior practice, not only in pricing its merchandise, but also in making a decision about whether or not to request the current review. ACA states that the Court of International Trade has held that Commerce may not alter its methodology if the relevant facts remain unchanged from the previous review, citing Shikoku Chemical Corp. v. United States, 795 F.

Supp. 417, 421 (CIT 1992) (Shikoku). ACA notes the POR-specific claims in this review resemble those accepted by the Department in previous administrative reviews. Consequently, ACA finds the reasons provided in the Department's preliminary results do not justify the Department's departure from its past practice when the facts in the two reviews allegedly are indistinguishable. ACA argues further that even if the Department could justify the use of its chosen warranty calculation methodology in this review, such last minute changes to the methodology are not permitted when they create dumping margins where none previously existed. See Shikoku, 795 F. Supp at 421-22.

Finally, ACA argues that even if using historical data in this review were warranted, a three-year historical average in this case produces distortions and inaccuracies in ACA's dumping margin calculation. ACA alleges the Department failed to acknowledge in its analysis the changes in the market directly impacting warranty expenditures. During the last three fiscal years, ACA asserts, customer quality testing of honey and resultant warranty claims have escalated. Due to these changes in the market, including a worldwide concern for nitrofuran contamination, ACA insists the latest fiscal year is most relevant for determining ACA's warranty expenses for this POR.

Petitioners state the Department's use of a three-year average of warranty expenses is reasonable under the facts of this case. Petitioners also insist the use of the three-year average is consistent with the Department's established policy and is fully explained in the Preliminary Results. Petitioners agree with the Department that when prices are set by the seller they would be based on historical experience, not on unforeseeable future warranty expenses. Petitioners also agree that market-based allocations are the most appropriate since in this case warranty terms do not vary significantly among customers. Petitioners aver that ACA's reported warranty expenses included warranty claims that were issued, expensed and reimbursed after the conclusion of the POR, noting that no warranty expenses were actually incurred during the POR. Petitioners maintain the actual warranty expense of zero recorded by ACA during the POR is unrepresentative of ACA's historical warranty claim experience. Therefore, petitioners argue, the Department's decision to apply the three-year historical average under these circumstances is fully justified.

Petitioners also state that the Department's warranty expense methodology cannot be considered as a "last minute change," as both the antidumping questionnaire and the manual indicate that historical warranty data are used when actual POR warranty expenses are inconsistent with historical experience. Petitioners assert that ACA could have anticipated that the difference between the actual amount of warranty expenses booked during the POR and the amounts reported by ACA in its responses would lead to the application of the Department's established policy. Further, petitioners aver that the Department afforded the respondent the opportunity to contest the Department's decision before the issuance of the final results of this administrative review.

Petitioners point out that at the time ACA made its sales it would bear in mind its own historical warranty experience, not some future unknown warranty claims, when it priced the honey for

POR sales. Petitioners also reject ACA's assertion that use of historical data "creates" a dumping margin that would not otherwise exist. Petitioners argue ACA set its honey prices lower in the United States than in France when no regard for the then unknown warranty claims is taken. Petitioners assert ACA's post-POR warranty adjustment does not create a dumping margin, as suggested by ACA; rather, it masks the actual level of dumping that was occurring by artificially lowering normal value. Finally, petitioners emphasize that the Department's established policy and precedent support its use of historical costs in this case, arguing the individual facts of this case dictate a different methodology because of the aberrational relationship between the amount of POR warranties incurred and those claimed. See Final Results of Carbon and Certain Alloy Steel Wire Rod from Mexico, 70 FR 25809 (May 16, 2005) at Comment 6. Petitioners point out that there is a sharp discrepancy between the amount of POR warranties incurred and those claimed; under such circumstances, petitioners maintain, the Department is not required to follow its previous methodology "if new arguments or facts support a different conclusion." See Hoogovens Staal BV v. United States, 4 F. Supp. 2d 1213, 1217 (CIT 1998) (Hoogovens Staal).

Petitioners state that the aberrational amount of warranty claims reported for ACA's French sales bears no relationship with "changes in the market" and growing concerns over "nitrofuran contamination" alleged by ACA. Petitioners also state that there is no evidence on the record demonstrating a direct correlation between significant changes in the honey market and increases in warranty claims and no correlation of warranty claims related to nitrofuran contamination in this period of review.

Department's Position:

We agree with petitioners and affirm our rationale for using an historical average as explained in the Preliminary Results. First, we recognize that the nature of a warranty expense is that it is unknown and unforeseeable at the time of sale. In evaluating these types of expenses (i.e., expenses that are inherently unpredictable at the time of sale), the Department relies on foreseeable expenses that can be reasonably anticipated based on the historical experience of a company. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 69 FR 6259 (February 10, 2004) at Comment 6 (S4 from Mexico). In that case, the Department revised the respondent's bad debt expense to align it with the amount of bad debt the company would expect to incur under normal circumstances. We find that warranty expenses and bad debt expenses operate in a similar manner, in that potential warranty claims and uncollectible accounts are unknown and unquantifiable at the time of sale. Unforeseeable expenses, including specific post-POR warranty claims, are irrelevant in the price setting of specific POR sales. Instead, sellers would normally build in a warranty and bad debt allowance across products, markets or customers based on a company's historical experience.

Historical experience of a company is used by the Department to gauge the reasonableness of reported POR warranty expenses, as indicated by the antidumping duty questionnaire. Thus, the

Department will use warranty expenses incurred during a single POR if the expenses are representative of the company's historical experience. In this case, the Department finds that ACA's lack of warranty expense incurred during the POR is largely inconsistent and aberrational based on previous warranty claim experience with the French market and other European markets. Rather than denying ACA a circumstance of sale adjustment for warranties altogether, the Department finds it reasonable to make a warranty adjustment based on ACA's historical experience with that market. See, e.g., Stainless Steel Sheet and Strip from the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001) at Comment 4.

With respect to allocation methodology, we find the preferred product-specific allocation approach, as suggested by the antidumping questionnaire, unfeasible due to the nature of the merchandise under review. See Preliminary Results. As in the past segments of this proceeding, ACA again elected to report its per unit warranty costs on a customer-specific basis. During the investigation, the Department rejected ACA's customer-specific allocation and reallocated the warranty expenses over the volume of sales to the market at issue. See Notice of Final Determination of Sales at Less than Fair Value; Honey From Argentina, 66 FR 50611 (October 4, 2001) at Comment 15 and Notice of Amended Final Determination of Sales at Less Than Fair Value, 66 FR 58434 (November 21, 2001) (Final Determination). As in the original investigation, since no significant differences exist between product lines and warranty terms between customers in the market at issue in this review, the Department finds a market allocation methodology superior under these circumstances.

We also reject ACA's assertion that our recalculation of warranty expenses constituted a "last minute" change. The antidumping questionnaire directly instructed ACA to report the unit cost of warranty expenses incurred during the POR and the past three fiscal years, indicating the Department viewed such historical expenses as relevant. ACA elected to report warranty claims related to POR sales which were expensed and reimbursed after the conclusion of the POR. ACA cites to past case precedent, including the previous segments of this proceeding, where the Department did utilize warranty claims paid after the close of the POR, in lieu of expenses incurred during the POR or historical data, in the calculation of per-unit warranty expenses. See e.g., Honey from Argentina: Final Results of Antidumping Duty Administrative Review, 70 FR 19926 (April 15, 2005) and Final Determination. While the Department acknowledges using warranty claims tied to POR sales in prior segments, nothing in these past precedents prevents the Department from modifying its approach, provided such modification is reasonable and the Department explains the reasons for departing from the previous approach. We are modifying our methodology in this review because we believe warranty expenses incurred during the POR are abberational and historical costs more appropriately reflect ACA's warranty experience.

With respect to our change in methodology, we disagree with ACA that Shikoku applies in this case. Shikoku involved the Department's change in methodology with respect to packing expenses. Shikoku, 795 F. Supp. at 420-22. The Department had used one methodology in the first four administrative reviews, but changed to a different methodology in the fifth and sixth

reviews, when the respondent was eligible for revocation. Id. at 418. The Court found that the respondent had relied on the old methodology, even adjusting its prices in accordance with this methodology. Id. at 420. Therefore, the Court found that the Department was bound to its old methodology. The packing expenses in Shikoku, however, are much different than the warranty expenses at issue here. Packing expenses are generally more predictable and can be reasonably estimated, whereas potential warranty claims are unforeseeable and unquantifiable at the time of sale. Therefore, unlike the respondent in Shikoku, which could set its prices by relying on the Department's methodology, we find that ACA could not have relied on the Department's warranty methodology in setting its prices in this instance. ACA asserts that its request for review relied upon the Department's previous warranty methodology, although we find this irrelevant because the petitioners also requested a review of ACA. Therefore, we conclude that the Court's holding in Shikoku does not apply here.

The Department is authorized to exercise its discretion in the treatment of warranty expenses, provided the interpretation of the statute is reasonable. NSK Ltd. v. United States, 190 F.3d 1321, 1331 (Fed. Cir. 1999) (citing Zenith Elecs Corp. v. United States, 988 F.2d 1573, 1583-84 (Fed. Cir. 1993)). The Department may formulate and apply improved methodologies based on the facts of a review. In this instance, the Department elected to use historical warranty expenses recorded in ACA's books and records, because ACA's actual POR expenses of zero were aberrational and post-POR claims are unforeseeable in nature. The Department is not required to follow its previous methodology if new arguments or facts support a different conclusion, such as the case here. See Hoogovens Staal, 4 F. Supp. 2d at 1217. We continue to find the individual facts of this case, when viewed in context with the Department's overall approach to warranty expenses, dictate a different methodology.

We also disagree with ACA's contention that the change in its warranty expense methodology in some way "creates" a margin where none existed. ACA's allegation that a zero margin would exist is unfounded because it rests on two unfounded assumptions: first, that the Department would utilize unrecorded post-POR warranty claims and second, that the Department would allocate these post-POR claims on a customer-specific basis in its analysis. Both of these "assumptions" were explicitly dismissed in the Preliminary Results. We note the Department afforded ACA full opportunity to defend its position prior to the publication of these Final Results.

We turn now to ACA's suggestion that the methodology adopted in the Preliminary Results fails to recognize the "changes in the market." Without disputing ACA's contention that European markets have imposed stricter quality requirements on honey purchases in the past three years, we note ACA failed to provide evidence of consistent increases in warranty claims, on both a market basis and an overall basis, to support this claim. We note that ACA's specific primary quality factor (i.e., nitrofuran contamination) cited in warranty claims in the previous review was not a factor in the reported warranty claims in this review. We find the record fails to establish any link whatsoever between the post-POR warranty claims reported by ACA in this review and the purported "changes in the market" cited in ACA's case brief as the basis for these claims.

Thus, we continue to find that the methodology used in the Preliminary Results is appropriate under these circumstances.

As explained above, while the Department is relying on ACA's historical average warranty expense for this POR, we note for the record the reported warranty claims relating to one customer were never recorded in ACA's books and records as warranty expenses or financial outlays. Rather these "warranty claims" were settled by ACA agreeing to offer price discounts on future sales for that particular customer. See Verification of France and U.S. Sale information submitted by Asociacion de Cooperativas Argentina (ACA) dated December 13, 2005 at page 22. The Department, therefore, concludes that these reported "warranty claims" are actually discounts offered on sales after the POR. As such, they do not qualify as legitimate warranty expenses as reported by ACA in this POR, and would not have been used by the Department even if we had relied on the reported post-POR information.

Comment 2: Testing Expenses

ACA asserts that the Department has erred in treating ACA's expenses for third-party testing and monitoring of testing as indirect selling expenses in the investigation and each subsequent review period. ACA explains that only European and Canadian customers require specific testing of honey for contamination with antibiotics and other substances. ACA claims the Department verified that it only incurs testing expenses if ACA has an open contract with a customer that requires testing. Furthermore, ACA insists these testing expenses are direct selling expenses because they result from and are directly related to specific contracts and vary with the quantity sold.

Petitioners note the Department has consistently classified testing expenses as indirect selling expenses in each of the preceding segments of this case including the original investigation, because the expenses do not bear a direct relationship to sales. Testing of honey is based on several open contracts and the specific market to which the honey will eventually be sold is not determined until ACA receives the testing results. Petitioners aver there is no information or argument on the record of this review demonstrating that these testing expenses are directly tied to sales. Petitioners urge the Department to continue classifying testing expenses as indirect selling expenses in the final results.

Department's Position

We disagree with respondent. Indirect selling expenses are incurred whether or not a particular sale is made, while direct selling expenses are expenses which can vary from sale to sale, and result from and bear a direct relationship to the particular sale in question. During this and the previous administrative reviews, we found that honey which does not meet the specific testing standards may be shipped to other markets. At verification, we also discovered that some honey is sent for additional testing before a sale contract is actually negotiated. See Verification Report dated December 13, 2005 at 24. In our report, we noted ACA sends specific lots of honey for

testing based on several "open contracts" it maintains with various customers. We also verified that the specific market to which the honey will eventually be sold is not determined until ACA receives the testing results.

The evidence on the record from this review and the previous segments of this proceeding regarding testing expenses does not demonstrate that these expenses result from and bear a direct relationship to the sales in question, within the meaning of 19 CFR 351.410(c) and the Department's practice. See, e.g., Oil Country Tubular Goods From Mexico; Final Results of Antidumping Duty Administrative Review, 66 FR 15832 (Mar. 21, 2001) at Comment 1; and Canned Pineapple Fruit From Thailand: Final Results of Antidumping Duty Administrative Review, 65 FR 77851 (Dec. 13, 2000) at Comment 5. Therefore for purposes of these final results, we have continued to treat ACA's testing expenses as indirect selling expenses.

Agree _____ Disagree _____

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David M. Spooner

Assistant Secretary
for Import Administration

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Date